IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

First Appeal No.1786 of 2007

Mr.Shyamsunder R. Singh .. .. Appellant (Orig. Plff.)

v/s.

The Municipal Corporation of Gr.Bombay & anr. .. ..Respondents (Org.Defts.)

Mr.J.N. Jayale for Appellant.

Mr.J.J. Xavier for Respondents.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 29th June, 2007

P.C. :

1. The Appeal challenges the judgment dated 30.3.2007 of the Bombay City Civil Court, dismissing the Appellant's suit, which was filed challenging a notice under Section 351 issued to the Appellant on 20.12.2001 for unauthorised construction with brick masonry wall and AC sheet roof.

2. Due process was followed. The structure was to be

demolished. The suit was filed. That has been dismissed. Record and proceedings have been produced before the Court. This Appeal can be disposed of at the admission stage itself. The only aspect to consider is whether the construction was a new and unauthorised construction of the first floor as described upon an old structure having a ground floor for which the notice was issued.

3. The Appellant must show that the structure existed as a ground plus one storeyed structure from the inception. One document proves that aspect. That is the sale-deed relied upon by the Appellant in the suit. The original sale-deed was produced on record. It was returned to the Appellant. A copy has been marked as Exhibit-16. The original as well as the copy are got produced. The original document which is partly tattered shows the sale-deed showing the transfer of the property shown in the schedule annexed thereto from Dawood Karim and others to Purshottam Singh and others. Purshottam Singh is the Appellant's father's uncle. Hence, the Appellant's predecessor-in-title was sold certain land and

structure under the sale-deed executed on 29.9.1958. The schedule to the document shows land admeasuring 550 sq. yards of Survey No.152 together with the stable and "other ground plus one storeyed house" thereof. That house is shown to be assessed under No.3536(1) at street No.30, Kothwadi. The notice is given in respect of the structure on that land at that address.

4. It is seen that the structure of ground plus one storey was in existence in 1958. That structure would have been a dilapidated structure at the time of the notice in 2001. The assessment bills for structure under No.3536(1) at 30 Kothwadi have been produced. These bills are for assessment of one "structure". The evidence of the officer of the Appellant shows that, that structure was assessed for ground plus first floor. Hence, it is clear that there was a structure of ground plus first floor.

5. It is the case of the Appellant that it was repaired. The photographs of the repaired structure are produced. The notice is not for reconstruction of a new structure in the

guise of a repair permission. The notice is only for the construction of the first floor. The first floor is seen to have been in existence prior to the datum line in 1962. The Respondents' notice is bad in law. The Respondents cannot act upon that notice. Consequently, the Appellant deserves to get protection against demolition in the suit. Since the suit is dismissed, the impugned judgment is set aside. Appeal is allowed. The Respondents shall not act upon the notice dated 20.12.2001.

6. Three photographs of the suit structure signed by the Appellant's Advocate are taken on record.

(ROSHAN DALVI, J.)